



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

January 29, 2003

Mr. Ashley L. Taylor, Jr.  
Troutman Sanders, L.L.P.  
P.O. Box 1122  
Richmond, Virginia 23218-1122

OR2003-0609

Dear Mr. Taylor:

On behalf of the Innerchange Freedom Initiative ("IFI"), you ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 175693.

IFI received a request for various information concerning its program. You contend that IFI is not a "governmental body" under the Act and therefore, IFI's records are not subject to required public disclosure under the Act. We agree.

The Act generally makes public the records of governmental bodies. Gov't Code §§ 552.001, .003, .021, .221. The Act defines "governmental body" in pertinent part as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

*Id.* § 552.003(1)(A)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). Thus, IFI would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.-Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue

in determining whether certain private entities are governmental bodies under the Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821 at 2 (1987).

You inform us that

IFI is a private, non-profit corporation organized and existing under the law of the Commonwealth of Virginia. IFI is not a paid contractor of the State of Texas, nor is IFI a custodian of records for Texas. Moreover, IFI does not keep any records constructively for the State of Texas. Indeed, IFI is a non-compensated volunteer service provider, which receives no State funding for its program. . . . IFI has not accepted any public funds from the State of Texas. . . . IFI declined to accept [\$1.5 million in funding from the 77<sup>th</sup> Texas Legislature].

In addition, you state that

IFI does not have a contract with any Texas agency and thus receives no public funds. . . . The Texas Department of Criminal Justice ("TDCJ") does not provide IFI with any direct financial support. However, TDCJ may, on occasion, permit IFI to conduct certain components of its pre-release program, such as counseling, with prisoners in suitable classrooms and when necessary recreational areas. In some limited cases, TDCJ may permit an IFI volunteer to use an open office for administrative purposes.

We do not believe that IFI's use of TDCJ's space for counseling and administrative purposes amounts to the public support of IFI sufficient to make IFI a governmental body under the Act. *Compare* Open Records Decision No. 602 (1992) (use of Dallas Museum of Art space for housing private art collection, city payment of museum's utility bills, and city payment of portion of salaries of museum employees who work on projects related to private collection held insufficient to bring documents relating to collection within Act) *with* Attorney General Opinion MW-373 (1981) (University of Texas Law School Foundation's use of public university space, utilities, telephone service, equipment and personnel amounted to public support of Foundation so as to make Foundation records relating to activities supported by public funds subject to Act). Thus, after consideration of IFI's arguments and review of the submitted information, including an uncompensated contract between TDCJ and Prison Fellowship Ministries, the organization that operates IFI, we find that IFI does not spend and is not supported in whole or in part by public funds. *Cf.*, *Blankenship*, 975 S.W.2d at 362 (nonprofit organization that received no public funds held not governmental body; fact that city approves organization's bond issuance does not amount to being supported by public funds); Open Records Decision Nos. 602 (1992) (portion of Dallas Museum of Art not supported by public funds held not to be governmental body); 569 (1990) (Fiesta San Antonio Commission designated by city ordinance as fiesta planning

agency but receiving no public funds held not governmental body); 317 (1982) (Mayor's task force that examined city governmental structure but did not spend and was not supported by public funds held not governmental body). Consequently, we conclude that IFI is not a governmental body subject to the Act, and therefore, it need not respond to the instant request for its information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

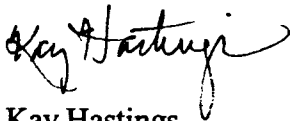
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 175693

c: Dr. Mike Maness  
804 North Beech  
Woodville, Texas 75979